IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIAL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 7943 of 2005

Between:

M/s.Lakshmi Traders rep., by its Proprietor Mr.Nagubandi Ramarao, s/o late Viswanadham, r/o House No.21-157, Near Bose Centre, Tiruvuru, Krishna District.

... PETITIONER

AND

1 The Andhra Bank, rep., by its Authorised Officer, Zonal Office at Vijayawada, Krishna District.
2 The Branch Manager, Andhra Bank, Tiruvuru, Krishna District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may will be pleased to issue writ or direction preferably writ of mandamus declaring the notice issued by the 1st respondent dated 06-12-04, 18-02-05 and 31-3-05 under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to take possession of the residential house bearing No.21-103(3), admeasuring 112 sq.yds., situated at Bose Centre, Tiruvuru of Krishna District of the petitioner is illegal, arbitrary, without jurisdiction and violative of principles of natural justice since civil suit for the same relief filed by the bank being O.S.no.134/04 on the file of the Senior Civil Judge, Nuzvidu is pending for adjudication and consequently set aside these notices.

Counsel for the Petitioner: MR.KOWTURU VINAYA KUMAR

Counsel for the Respondents: MR.NUTY RAM MOHAN RAO

The Court at the stage of admission made the following:

ORDER:

This writ petition is filed seeking a declaration that the notices issued by the first respondent Bank dated 06-12-2004,
18-02-2005 and 31-03-2005 under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') as arbitrary and illegal.

The petitioner contends that since the second respondent Bank has already filed O.S.No.134 of 2004 on the file of the learned Senior Civil Judge, Nuzvidu of Krishna District for recovery of a sum of Rs.4,97,121/-, while the said suit is pending, the second respondent ought not to have issued the impugned proceedings under the Act.

When the matter is taken up for consideration, learned standing counsel appearing for the respondent Bank has placed before this Court a copy of the order of the Division Bench in W.P.No.21533 of 2004 dated 02-12-2004 in which the Division Bench having considered an identical issue held that there is no bar in the respondent Bank in simultaneously proceeding before the civil Court as well as under the provisions of the Act. The Court also observed that the petitioner has an adequate remedy of challenging any action of the respondent bank by preferring an appeal as available under the provisions of the Act before the Debt Recovery Tribunal and accordingly dismissed the writ petition.

Having heard the learned counsel for both the parties, I am of the view that the issue raised in this writ petition is squarely covered by the decision of the Division Bench in W.P.No.21533 of 2004 dated 02-12-2004. Accordingly the writ petition is dismissed, granting, leave and liberty to the petitioner to workout the remedy of appeal.

Having regard to the facts and circumstances of the case, there shall be a direction to the respondents not to take any further steps in pursuance of the impugned notice dated
31-03-2005 for a period of two weeks from today.

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G. ROHINI, J

Dated: 11-04-2005

Note: Furnish C.C. in two days.

B/o.

LSK

ASSISTANT REGISTRAR

To

1 The Zonal Office, Andhra Bank,
Vijayawada, Krishna District.
2 The Branch Manager, Andhra Bank, Tiruvuru, Krishna District.

3 Two C.D. Copies.